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10/690,085	10/20/2003	Lee S. Weinblatt	5264-44	4859

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EXAMINER

DEAN, RAYMOND S

ART UNIT	PAPER NUMBER
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2618

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/690,085	Applicant(s) WEINBLATT ET AL.	
	Examiner RAYMOND S. DEAN	Art Unit 2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 29 June 2009.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-4 is/are pending in the application.

 4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-4 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed June 29, 2009 have been fully considered but they are not persuasive.

Examiner respectfully disagrees with Applicants' assertion that the personal data meters of Kiefl "are clearly and explicitly described as being not portable" on Page 7 of Applicants remarks. Kiefl teaches portable personal data meters that can be carried or worn by users (See Abstract, Cols. 2 lines 35 – 45, 3 lines 22 – 26).

Examiner also respectfully disagrees with Applicants' assertion that the combination of Kiefl and Weinblatt would require substantial reconstruction and redesign of Kiefl and that there is no "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness". Weinblatt, like Kiefl, teaches an audience monitoring system wherein portable monitoring units store signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned thus modifying Kiefl with Weinblatt renders an alternative means for achieving the same predictable result, which is providing portable monitoring units that signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim(s) 2, 4 is/are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. Supreme Court precedent¹ and recent Federal Circuit decisions² indicate that a statutory “process” under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. While the instant claim(s) recite a series of steps or acts to be performed, the claim(s) neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process. For example: the method of Claim 1 including the step of “providing a portable audience monitoring unit ...” is of sufficient breadth that it would be reasonably interpreted as a step completely performed mentally, verbally or **without a machine**. The Applicant has provided no explicit and deliberate definition of “providing” to limit the step to a machine or apparatus and the claim language itself is sufficiently broad to read on a person providing the portable audience monitoring unit.

¹ *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

² *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 – 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiefl (5,382,970) in view of Weinblatt (5,630,203) and in further view of Schroeder et al. (US 6,463,271).

Regarding Claim 1, Kiefl teaches an apparatus for monitoring an audience member tuned to a program within a broadcast signal comprising: a portable audience monitoring unit adapted to be worn by the audience member (Figures 1, 2, Abstract, Col. 5 lines 37 – 41) including: wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Cols. 5 lines 60 – 65, 6 lines 38 – 41), and means for storing the detected code signal (Col. 6 lines 38 - 41); means for outputting the detected code signal stored in said portable audience monitoring unit (Cols. 6 lines 64 – 68, 7 lines 1 – 8, in order to be transmitted to the central location the data, which is the code signal, must be outputted); and communication means for transmitting the outputted detected code signal to a central processing station (Cols. 6 lines 64 – 68, 7 lines 1 – 8).

Kiefl does not teach means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program and

wherein said communication means communicates with Cellular Digital Packet Data (CDPD).

Weinblatt, which, like Kiefl, teaches an audience monitoring system wherein portable monitoring units store signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned, teaches means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Figure 1, Abstract, Col. 3 lines 43 – 51, 4 lines 16 – 65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the above audience monitoring feature of Weinblatt in the system of Kiefl as an alternative means for achieving the predictable result of providing portable monitoring units that signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned.

Schroeder, which, like Kiefl, teaches a cellular phone that transmits data via wireless means, teaches a wireless phone that has CDPD capability (Col. 7 lines 46 – 63).

Kiefl in view of Weinblatt and Schroeder teach a cellular phone that transmits data via wireless means thus it would have been obvious to one of ordinary skill in the art at the time the invention was made use the CDPD capability of Schroeder as an alternative means of achieving the same predictable result of transmitting data via wireless means.

Regarding Claim 2, Kiefl teaches a method for monitoring an audience member tuned to a program within a broadcast signal comprising: providing a portable audience monitoring unit adapted to be worn by the audience member (Figures 1, 2, Abstract, Col. 5 lines 37 – 41); wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Cols. 5 lines 60 – 65, 6 lines 38 – 41); storing the detected code signal (Col. 6 lines 38 – 41); outputting the detected code signal stored in said portable audience monitoring unit (Cols. 6 lines 64 – 68, 7 lines 1 – 8, in order to be transmitted to the central location the data, which is the code signal, must be outputted); and transmitting the outputted detected code signal to a central processing station (Cols. 6 lines 64 – 68, 7 lines 1 – 8).

Kiefl does not teach detecting with said portable audience monitoring unit a code signal that forms the broadcast signal in combination with a programming signal used to perform the program and wherein said communication means communicates with Cellular Digital Packet Data (CDPD).

Weinblatt, which, like Kiefl, teaches an audience monitoring system wherein portable monitoring units store signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned, teaches means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Figure 1, Abstract, Col. 3 lines 43 – 51, 4 lines 16 – 65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the above audience monitoring feature of Weinblatt in the system of Kiefl as an alternative means for achieving the predictable result of providing portable monitoring units that signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned.

Schroeder, which, like Kiefl, teaches a cellular phone that transmits data via wireless means, teaches a wireless phone that has CDPD capability (Col. 7 lines 46 – 63).

Kiefl in view of Weinblatt and Schroeder teach a cellular phone that transmits data via wireless means thus it would have been obvious to one of ordinary skill in the art at the time the invention was made use the CDPD capability of Schroeder as an alternative means of achieving the same predictable result of transmitting data via wireless means.

6. Claims 3 – 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiefl (5,382,970) in view of Weinblatt (5,630,203) and in further view of Hansen et al. (US 6,173,158).

Regarding Claim 3, Kiefl teaches an apparatus for monitoring an audience member tuned to a program within a broadcast signal comprising: a portable audience monitoring unit adapted to be worn by the audience member (Figures 1, 2, Abstract, Col. 5 lines 37 – 41) including: wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Cols. 5 lines 60 – 65, 6 lines 38 – 41),

and means for storing the detected code signal (Col. 6 lines 38 - 41); means for outputting the detected code signal stored in said portable audience monitoring unit (Cols. 6 lines 64 – 68, 7 lines 1 – 8, in order to be transmitted to the central location the data, which is the code signal, must be outputted); and communication means for transmitting the outputted detected code signal to a central processing station (Cols. 6 lines 64 – 68, 7 lines 1 – 8).

Kiefl does not teach means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program and wherein said communication means communicates with a ReFLEX protocol.

Weinblatt, which, like Kiefl, teaches an audience monitoring system wherein portable monitoring units store signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned, teaches means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Figure 1, Abstract, Col. 3 lines 43 – 51, 4 lines 16 – 65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the above audience monitoring feature of Weinblatt in the system of Kiefl as an alternative means for achieving the predictable result of providing portable monitoring units that signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned.

Hansen, which, like Kiefl teaches in the wireless data communication field of endeavor, teaches a pager that uses the ReFLEX protocol (Col. 4 lines 51 – 53).

Kiefl in view of Weinblatt and Hansen teach portable wireless devices that transmit data via wireless means thus it would have been obvious to one of ordinary skill in the art at the time the invention was made use the ReFLEX capability of Hansen as an alternative means of achieving the same predictable result of transmitting data via wireless means.

Regarding Claim 4, Kiefl teaches a method for monitoring an audience member tuned to a program within a broadcast signal comprising: providing a portable audience monitoring unit adapted to be worn by the audience member (Figures 1, 2, Abstract, Col. 5 lines 37 – 41); wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Cols. 5 lines 60 – 65, 6 lines 38 – 41); storing the detected code signal (Col. 6 lines 38 - 41); outputting the detected code signal stored in said portable audience monitoring unit (Cols. 6 lines 64 – 68, 7 lines 1 – 8, in order to be transmitted to the central location the data, which is the code signal, must be outputted); and transmitting the outputted detected code signal to a central processing station (Cols. 6 lines 64 – 68, 7 lines 1 – 8).

Kiefl does not teach detecting with said portable audience monitoring unit a code signal that forms the broadcast signal in combination with a programming signal used to perform the program and wherein said communication means communicates with a ReFLEX protocol.

Weinblatt, which, like Kiefl, teaches an audience monitoring system wherein portable monitoring units store signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned, teaches means for detecting a code signal that forms the broadcast signal in combination with a programming signal used to perform the program, wherein the code signal corresponds to the broadcast program to which the audience member is tuned (Figure 1, Abstract, Col. 3 lines 43 – 51, 4 lines 16 – 65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the above audience monitoring feature of Weinblatt in the system of Kiefl as an alternative means for achieving the predictable result of providing portable monitoring units that signals which indicate the television channel to which a person is tuned and thus the broadcast program to which said person is tuned.

Hansen, which, like Kiefl teaches in the wireless data communication field of endeavor, teaches a pager that uses the ReFLEX protocol (Col. 4 lines 51 – 53).

Kiefl in view of Weinblatt and Hansen teach portable wireless devices that transmit data via wireless means thus it would have been obvious to one of ordinary skill in the art at the time the invention was made use the ReFLEX capability of Hansen as an alternative means of achieving the same predictable result of transmitting data via wireless means.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAYMOND S. DEAN whose telephone number is (571)272-7877. The examiner can normally be reached on Monday-Friday 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward F. Urban can be reached on 571-272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raymond S Dean/
Examiner, Art Unit 2618
Raymond S. Dean
November 9, 2009